

Act No. 253  
Public Acts of 1992  
Approved by the Governor  
November 19, 1992  
Filed with the Secretary of State  
November 19, 1992

**STATE OF MICHIGAN**  
**86TH LEGISLATURE**  
**REGULAR SESSION OF 1992**

Introduced by Rep. Joe Young, Jr.

# **ENROLLED HOUSE BILL No. 4690**

AN ACT to amend sections 1001, 1002, 1003, 1004, 1005, 1006, 1009, 1012, 1013, 1014, 1015, 1019, 1020, 1021, and 1022 of Act No. 299 of the Public Acts of 1980, entitled as amended "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of the department of licensing and regulation and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," sections 1005, 1009, and 1013 as amended by Act No. 463 of the Public Acts of 1988, being sections 339.1001, 339.1002, 339.1003, 339.1004, 339.1005, 339.1006, 339.1009, 339.1012, 339.1013, 339.1014, 339.1015, 339.1019, 339.1020, 339.1021, and 339.1022 of the Michigan Compiled Laws; and to repeal certain parts of the act.

*The People of the State of Michigan enact:*

Section 1. Sections 1001, 1002, 1003, 1004, 1005, 1006, 1009, 1012, 1013, 1014, 1015, 1019, 1020, 1021, and 1022 of Act No. 299 of the Public Acts of 1980, sections 1005, 1009, and 1013 as amended by Act No. 463 of the Public Acts of 1988, being sections 339.1001, 339.1002, 339.1003, 339.1004, 339.1005, 339.1006, 339.1009, 339.1012, 339.1013, 339.1014, 339.1015, 339.1019, 339.1020, 339.1021, and 339.1022 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 1001. As used in this article:

- (a) "Client" means a person who engages the services of a personnel agency.
- (b) "Consulting agent" means the individual designated by a type B personnel agency who is responsible for the general management of that type B personnel agency.
- (c) "Employee" means a person performing work or service for compensation.
- (d) "Employer" means a person employing or seeking to employ a person for compensation.
- (e) "Employment agent" means the individual designated by a type A personnel agency who is responsible for the general management of that type A personnel agency.
- (f) "Fee" means any direct or indirect compensation.
- (g) "Job order" means an oral or written notification by an employer to a personnel agency that a job opening exists for which the employer wishes to find an employee and includes all information regarding the job.
- (h) "Personnel agency" means a type A personnel agency or a type B personnel agency, or both.
- (i) "Registration fee" means a fee other than the fee specified in a contract, which a personnel agency requires or accepts from a client prior to execution of a contract.

(j) "Resume writing service" means a person who provides professional assistance to an applicant in compiling a resume by assembling relevant data, organizing it in writing, and providing copies to the applicant for a fee.

(k) "Type A personnel agency" means a person who is engaged in the business or profession of serving, assisting, or in any way aiding a client seeking employment or making basic career decisions, who puts a client in direct contact with employers, and who receives a fee from the client for the services rendered or offered to be rendered.

(l) "Type B personnel agency" means a person who is engaged in the business or profession of serving, assisting, or in any way aiding or consulting with a client to make basic career decisions and who receives a fee from the client for the services rendered or offered to be rendered.

Sec. 1002. The personnel agency board is created. Six of the members shall have served, for at least 3 years immediately preceding appointment, as an owner or manager in the personnel agency industry in this state.

Sec. 1003. (1) A person shall not open, operate, or maintain a personnel agency in this state without first obtaining the appropriate license from the department. The department shall determine whether an agency is considered a type A personnel agency or a type B personnel agency.

(2) This article does not apply to all of the following:

(a) A regularly established educational institution, religious, labor, charitable, benevolent organization, or department or bureau maintained for the purpose of providing free employment or consulting services for which no fee, compensation, or other valuable consideration is charged or received, directly or indirectly.

(b) A person who maintains an employment or consulting office for the person's own intraorganization purposes exclusively, the Michigan employment security commission, an organization which provides vocational rehabilitation services if the fees are paid by an insurer or self-insurer responsible under applicable state or federal insurance laws for the providing of vocational rehabilitation services to an individual, or a person under a contract with the state of Michigan to provide employment services.

(c) A person employing an individual to render part-time or temporary personal service to, for, or under the direction of a third person if the person employing the individual, in addition to a wage or salary, pays federal social security taxes, state and federal unemployment insurance, carries worker's disability compensation insurance as required by the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws, and sustains responsibility for the acts of the employee while rendering service to, for, or under the direction of a third person.

(d) The business of procuring, offering, promising, promoting, or attempting to provide an engagement for an athletic event, a circus, concert, vaudeville, theatrical, or other entertainment, or of giving information as to where an engagement may be procured or provided for an actor, artist, athlete, entertainer, or performer in an athletic event, a circus, vaudeville, theatrical, or other entertainment.

Sec. 1004. (1) An individual shall not operate as an employment agent or consulting agent in this state without first obtaining the appropriate license from the department. A personnel agency and its employment agent and consulting agent shall be jointly and severally responsible for the actions of a person employed by the personnel agency.

(2) The department shall issue an employment agent license or consulting agent license to an individual who complies with all of the following requirements:

(a) Successfully completes a written examination which tests the knowledge of this article, the rules promulgated under this article, the laws against discrimination in employment, and other laws pertinent to serving as an employment agent or consulting agent.

(b) Is of good moral character.

(c) Is at least 18 years of age.

(3) An employment agent or a consulting agent shall not operate independently of a type A personnel agency or a type B personnel agency, as is appropriate.

Sec. 1005. (1) The department shall issue a personnel agency license to a person who complies with all of the following requirements:

(a) Provides a surety or cash bond as set forth in section 1006.

(b) Applies for licensure in a name acceptable to the department. A person may not apply for or obtain both types of personnel agency licenses under the same name or a similar name. The department may disapprove a name similar to that of the Michigan employment security commission, a name likely to be confused with a free

placement bureau, an existing licensed personnel agency, or a name the department determines to be likely to mislead the public. A person whose proposed personnel agency name is disapproved may appeal the disapproval to the board in the manner provided for in section 515.

(c) Demonstrates that the premises designated in the application for licensure is an acceptable place for the personnel agency to conduct business. A personnel agency shall not share quarters or office space or have a common waiting room with any other personnel agency, with a resume writing service, or with any other person the department determines is a business related to the business of a personnel agency.

(d) Provides a statement of good moral character for each owner, officer, or partner. This requirement shall be applicable to the owner and to any subsequent owners, if the personnel agency is a sole proprietorship; to each officer and any subsequent officers and to each shareholder owning 10% or more of the stock or subsequent shareholders owning 10% or more of the stock, if the personnel agency is a corporation; and to each partner and to any subsequent partners, if the personnel agency is a partnership.

(e) Designates an employment agent or consulting agent licensed or seeking licensure under section 1004. The personnel agency shall not begin to provide its services until the agent is licensed.

(2) In order to be licensed in this state, a nonresident applicant shall obtain a certificate of authority to do business in this state and file a copy of the certificate and an irrevocable consent appointing the department to receive service of process in any noncriminal proceeding against that person for a violation of this article, a rule promulgated under this article, or an order issued under this article after the consent is filed.

(3) A person shall obtain from the department an appropriate license for each office.

(4) A personnel agency shall designate and maintain at all times an on-site employment agent or consulting agent, as is appropriate, who shall be responsible for the general management of the licensed office and for assuring compliance with this article, rules promulgated under this article, and applicable state and federal laws and regulations.

(5) A personnel agency license issued under this article and the license of the employment agent or consulting agent for each office shall be displayed in a conspicuous place within the office of the licensed agency.

Sec. 1006. (1) A personnel agency shall file with the department, on a form provided by the department, a surety or cash bond in the amount of \$10,000.00. The bond shall be conditioned on all of the following:

(a) That the licensee or the person applying for the license shall comply with the terms of any contract entered into between the personnel agency and a client.

(b) That money paid by the client shall be refunded to the client, if the refund is required pursuant to this article.

(c) That an action on a bond due to an act which occurred before the expiration or cancellation of the bond may be commenced not later than 1 year after the expiration or cancellation date of the bond.

(d) That the revocation or suspension of a license shall not affect the coverage provided by the bond as to an act that occurred before the date of revocation or suspension.

(e) That the surety shall notify the department if the bond is canceled or terminated by the surety or personnel agency.

(2) If, in the opinion of the department, the surety becomes irresponsible, the personnel agency, upon notice given by the department, shall give a new bond as described in this section. The failure to give a new bond within 30 days after notice from the department shall operate as an automatic suspension of the personnel agency license.

(3) The department shall not renew a license issued under this article if the department has been notified by the person issuing the bond that the bond required under this section has been canceled or terminated.

Sec. 1009. (1) A license issued under this article is not transferable.

(2) Within 15 days after a personnel agency changes from a sole proprietorship to a partnership or corporation, or from a partnership to a sole proprietorship or corporation, or from a corporation to a sole proprietorship or partnership, all licensure requirements for the new entity shall be met.

(3) A personnel agency which seeks to admit a new partner to an existing partnership or a new officer or stockholder to an existing corporation shall notify the department within 15 days after a change in the partners of a partnership or the officers of a corporation or the stockholders of a corporation owning 10% or more of the stock of the corporation. The notice shall be made on a form provided by the department and shall contain information by which the department may determine whether the new individual is of good moral character.

(4) If a designated employment agent or consulting agent is no longer employed by the personnel agency or is no longer charged with the general management of the personnel agency's office, the personnel agency shall

designate another licensed employment agency or consulting agent and notify the department within 15 days after the appointment is made. A temporary license may be issued to an applicant for an agent's license pursuant to section 213.

(5) An employment agent or consulting agent shall notify the department in writing within 5 business days after the date he or she is no longer employed by a personnel agency or is no longer charged with the general management of the office of that personnel agency.

(6) A personnel agency shall notify the department, in writing, within 30 days after the date of any change of address and shall demonstrate that the premises designated is an acceptable place for the personnel agency to conduct business.

Sec. 1012. (1) A type A personnel agency shall enter into a written contract with each client for the services to be rendered for which a charge is to be made by the personnel agency. The contract shall embody all the terms and conditions of the agreement between the personnel agency and the client and shall include, but not be limited to, the following:

(a) The licensed name, address, and telephone number of the personnel agency.

(b) A notice that the personnel agency is licensed, bonded, required to operate under the laws of the state of Michigan, and regulated by the department.

(c) The name and address of the client.

(d) The personnel agency's fee schedule.

(e) The duration of time the client is obligated under the terms of the contract.

(f) The guarantee period of employment after which no refund will be made.

(g) The services to be provided and the manner in which the services are to be provided to the client.

(h) The terms under which the fee is to be paid.

(i) The terms under which a client may receive a refund.

(j) The signatures of the client and the personnel agency employee executing the contract.

(2) If a client accepts employment as a result of the action of a type A personnel agency, reports for work, and is employed for less than the personnel agency's guarantee period as indicated in the contract, the gross fee charged to the client shall not exceed 20% of the salary or wages earned by the employee. The minimum guarantee period shall be at least 60 calendar days. The terms of the refund shall include a notice that if a fee in excess of the amount required has been collected by the personnel agency, the excess amount shall be refunded to the client within 7 days after the client requests the refund.

(3) A type A personnel agency shall provide 1 copy of the signed contract to the client and shall maintain 1 copy in the agency's file relating to that client.

(4) If a client accepts employment as a result of the services of a type A personnel agency, the agency shall maintain in that client's contract file a record showing the name and address of the client, the name and address of the employer with whom employment is accepted, the nature of the employment, the amount of the agency fee, the dates and amounts of payment, and the date and amount of any refund. The record shall include a space for remarks of an individual nature which supplement the required information.

(5) A type A personnel agency shall give to a client from whom a fee is received for the services rendered or assistance given a receipt bearing the name and address of the personnel agency, the name of the client, the name of the individual receiving the fee, the amount of the fee, the date of payment of the fee, and the reason for payment of the fee. The original receipt shall be given to the client and a copy shall be filed by the agency in the same place as the contract under which payment was made.

(6) A type A personnel agency shall maintain a client file containing the contract, the employment and payment record, and receipts of payment for at least 3 years following the last payment or refund.

Sec. 1013. (1) Except as otherwise provided in subsection (5), a type A personnel agency shall not direct a client to employment without having obtained from the proposed employer, either orally or in writing, a bona fide job order. The job order shall be recorded on a form and shall include, but not be limited to, the following information:

(a) The full name and position of the individual placing the order on behalf of the employer.

(b) The name of the individual taking the job order on behalf of the personnel agency.

(c) The date on which the order is placed.

(d) The nature of the employment.

(e) The name and address of the employer to whom a client may be directed and the name and title of the individual to be contacted.

(f) The probable duration of the employment if employment is other than permanent.

(g) The rate of the wage or salary to be paid to an employee.

(2) A type A personnel agency shall not direct a client to employment without giving to the client, in written form, the following:

(a) The name, address, and telephone number of the personnel agency.

(b) The name of the client being directed.

(c) The name of the employment agent directing the client.

(d) The name and address of the employer to whom the client is directed and the individual to be contacted.

(e) The kind of employment available at the place of prospective employment.

(f) The minimum starting salary or wage of the proposed employment.

(3) A type A personnel agency may refer a client to an employer by telephone, but the telephone referral shall be confirmed in writing within 24 hours of the referral by mailing or delivering to the client the job referral form described in subsection (2).

(4) Except as otherwise provided in subsection (5), if a client is referred to an employer and employment of the kind specified does not exist at the place to which the client is directed, and the client does not accept other employment in substitution of the kind of employment contained in the job referral, the agency, within 24 hours after demand, shall refund to the client the sum paid by the client for transportation in going to and returning from the referral.

(5) A type A personnel agency may direct a client to an employer if the employer has previously requested that the employer be advised of clients with certain employment qualifications even though an actual vacancy does not exist in the employer's organization at the time the client is referred. A type A personnel agency may also communicate the qualifications of a client to an employer which the agency reasonably believes may be seeking employees with such qualifications, even though a job order has not been placed with the agency. However, the client shall be advised that the referral to such an employer is being made without the knowledge of any vacancy and that there will be no refund of client expenses by the agency if employment is not obtained from such a referral.

(6) A type A personnel agency shall maintain a file for at least 3 years regarding each job order. The file shall contain at least the following information:

(a) A copy of the job order.

(b) A copy of each job referral given to a client regarding that job.

(c) A copy of any advertising based on that job order, including the date of the advertising and the place in which it was advertised.

Sec. 1014. (1) A type B personnel agency shall enter into a written contract with each client for services to be rendered for which a charge is to be made to the client by the agency. The contract shall embody all terms and conditions of the agreement between the agency and the client and shall include, but not be limited to, the following:

(a) The licensed name, address, and telephone number of the personnel agency and the name and address of the client.

(b) A notice that the contract should not be signed until the client has read, signed, and dated the required applicable waiver.

(c) A notice that the agency is licensed, bonded, required to operate under the laws of the state of Michigan, and regulated by the department.

(d) The agency's fee schedule as it applies to the client.

(e) The terms under which the fee is to be paid.

(f) A complete list of the services offered and a description of those services.

(g) A description of the place and manner in which the services will be provided.

(h) The contract execution date and the duration of the client's obligations under the terms of the contract.

(i) The terms under which a client may receive a refund.

(j) The signatures of the client and the agency employee executing the contract.

(2) If the type B personnel agency does not provide job listing services to its clients, the contract shall be accompanied by the following waiver. The waiver shall be printed in 14-point type on a piece of paper 8-1/2 inches by 11 inches in size. The waiver shall be read, signed, and dated by the client prior to the execution of the contract and made a part of the contract, and shall read: "Notice: We are not an employment agency and are not

permitted under the terms of this contract to schedule interviews or to in any way put you in direct contact with potential employers. This waiver must be read, signed, and dated by the client prior to the signing of the contract." A type B personnel agency which provides job listings shall comply with section 1015 and use the waiver set forth in that section.

(3) A type B personnel agency shall provide 1 copy of the signed contract to the client and shall maintain 1 copy in the agency's file relating to that client.

(4) A type B personnel agency shall give each client from whom a fee is received a receipt bearing the name and address of the agency, the name of the client, the amount of the payment, the date the payment was received, the name of the individual receiving the payment, and the reason for the payment. The original of the receipt shall be given to the client and a copy shall be filed by the agency in the same place as the contract under which the payment was made.

(5) A type B personnel agency shall maintain the client file, containing the contract, a record of services rendered and payments received, and receipts of payment, for at least 3 years following the last payment or refund.

Sec. 1015. In addition to the requirements of section 1014, a type B personnel agency which provides job listings to its clients shall do all of the following:

(a) Require that a potential client read, sign, and date the following waiver prior to entering into a contract for services with the agency. The waiver shall be printed in 14-point type on a piece of paper 8-1/2 inches by 11 inches in size. The waiver shall be made a part of the contract and shall read: "Notice: We are a job information service. We do not schedule interviews with potential employers. Instead, we provide information on employment opportunities. We cannot guarantee you a job. We do guarantee that the jobs listed with us are confirmed at least every 10 calendar days. We have provided you with a sample of actual current job listings. As a client you may obtain a copy of a specific job listing which has been advertised. If you discover that a job which is listed in a job order has not been confirmed within 10 calendar days or that a job listing is not accurate as advertised or not complete as required by law, you may receive a full refund."

(b) Allow a client to inspect a sample of all current job listings advertised within the previous 2 weeks prior to entering into the agency contract or requesting payment of any fee. Identifying features of the employer may be deleted in the sample listing.

(c) Limit the contract with a client to not more than 12 months with no provision for mandatory or automatic renewal of the contract.

(d) Have a job order for each job or place of employment listed, and confirm each job order with the employer before it is listed and not less than once every 10 calendar days thereafter until the job order is canceled. The job order shall contain a written record of the date and the name and title of the person contacted at the employer's place of business to confirm the job order.

(e) Cancel any job listing within 24 hours after receipt of an oral or written notice from an employer canceling the job order or stating that the job has been filled and giving the name and title of the person at the employer's place of business stating that the order is canceled or the job is filled.

(f) Provide a client a copy of any job order or job listing upon request by the client.

(g) Refund fees charged to a client within 24 hours after being requested to make a refund if the job order was not confirmed within 10 calendar days or was inaccurate or incomplete.

(h) Maintain a job listing for each job order which contains all of the following information:

(i) The name and either the address or the telephone number of the person whom the client may contact regarding the potential employment.

(ii) The name and title of the person confirming on behalf of the employer that a job opening exists for which the employer seeks an employee.

(iii) The name and either the address or telephone number of the potential employer and the general location of the employment.

(iv) The job title of the potential employment.

(v) The minimum starting salary or wage for the job.

(vi) The probable duration of the employment if the job is not a permanent position.

(vii) The minimum job qualifications and requirements for each job.

(i) Maintain for at least 3 years records of each client contract, including the waiver, the payments made and services rendered under that contract, and any refunds required.

(j) Maintain for at least 3 years records of each job order and job listing, copies of any advertising of that job listing, the list of job order confirmations performed, and the notice of cancellation for that job order.

(k) If the agency advertises job listings, confirm that the job has not been filled or the job order canceled within 24 hours before placing the advertising. If the job listing is being advertised, cancel the advertising within 24 hours after being notified that the job order has been canceled or the job has been filled.

Sec. 1019. A personnel agency, or any licensed agent or other agent or employee of a personnel agency shall not do any of the following:

- (a) Use any name other than the name in which the personnel agency is licensed.
- (b) Bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for services as a personnel agency without alleging and proving that the agency and its agent were licensed under this article during the performance of the act or contract.
- (c) Use a form which contains provisions in violation of this article, rules promulgated under this article, or other state or federal laws or regulations.
- (d) Share a fee with any other person, except a personnel agency licensed in this state or in any other state requiring licenses for personnel agencies or a personnel agency in a state in which licensure is not required.
- (e) Persuade, induce, or solicit an employer to discharge an employee.
- (f) Request or accept a registration fee or any other fee not set forth in the agency's contract with a client or charge a fee higher than the fee set forth in the contract.
- (g) Request or accept, or give, offer, or promise to give, a gift of such value that the gift is likely to persuade, induce, or influence an action of an employer or benefit the personnel agency or any of its agents or employees.
- (h) Knowingly procure, entice, send, or aid in procuring, enticing, or sending a person to perform an illegal act.
- (i) Prevent an employee of the department from inspecting the records of the agency at any time during normal business hours.

Sec. 1020. A type A personnel agency, its licensed employment agent, or any other agent or employee of the type A personnel agency, shall not do any of the following:

- (a) Persuade, induce, or solicit an employee to leave employment which has been secured for that employee by the personnel agency.
- (b) Send a client to a place where a strike or lockout exists or is impending without informing the client of the strike or lockout, and so noting that fact upon the job referral slip given to the client.
- (c) Require or accept a fee from a client until the client has made a bona fide acceptance of employment.
- (d) Enter into or enforce a contract with a client if another personnel agency or business entity is a party to the contract.

Sec. 1021. A type B personnel agency shall not do any of the following:

- (a) Put a client in direct contact with a specific employer.
- (b) Contact a specific employer on behalf of a client.
- (c) Advertise the availability of an individual for employment.
- (d) Charge or accept a fee from a client at the time a client procures employment.
- (e) Provide clients with lists of potential employers, if the type B personnel agency chooses to provide such lists in compliance with section 1015, without providing additional consulting services.
- (f) Advertise, including in directories or news media, that it is an employment agency or in such a manner that may lead a client or potential client to believe that the type B personnel agency or any of its agents or employees may, in any way, put a client in direct contact with an employer.

Sec. 1022. A person who holds a license to operate pursuant to this article on the effective date of the 1991 amendatory act that amended this section shall be considered by the department to be appropriately licensed under this article until that license expires.

Section 2. Sections 1007, 1008, 1010, 1011, 1016, 1017, and 1018 of Act No. 299 of the Public Acts of 1980, being sections 339.1007, 339.1008, 339.1010, 339.1011, 339.1016, 339.1017, and 339.1018 of the Michigan Compiled Laws, are repealed.

Section 3. This amendatory act shall not take effect unless House Bill No. 4689 of the 86th Legislature is enacted into law.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.